

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CHRIS H. CAVE,

Plaintiff(s),

v.

NATIONAL DEFAULT SERVICING  
CORPORATION, et al.,

Defendant(s).

Case No. 2:15-CV-122 JCM (VCF)

ORDER

Presently before the court are defendant JPMorgan Chase Bank, N.A.'s ("Chase")<sup>1</sup> motion to dismiss for failure to state a claim (doc. # 5) and motion to expunge lis pendens (doc. # 6).<sup>2</sup> Defendant National Default Servicing Corporation ("National Default") joined both of Chase's motions. (Doc. # 9). *Pro se* plaintiff Chris H. Cave filed a response (doc. # 10), and Chase filed a reply (doc. # 13).

Also before the court are plaintiff's petition for leave to amend complaint (doc. # 26) and motion to expand page limit (doc. # 27). None of the defendants filed responses and the deadline to do so has passed.

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<sup>1</sup> Chase appears for itself and as a receiver for Washington Mutual Bank.

<sup>2</sup> Chase filed a combined motion to dismiss for failure to state a claim and to expunge lis pendens. In accordance with Special Order 109, the clerk's office split the motion and docketed each motion as a separate entry. (Docs. ## 5, 6). The two motions are identical in substance.

1     **I.     Background**

2             This is a mortgage-foreclosure related action relating to the real property at 919 Linn Lane,  
3     Las Vegas, Nevada 89110-2600.<sup>3</sup> (Doc. # 5-1 at 69). In May 2007, plaintiff and his non-party  
4     spouse obtained a \$272,000.00 loan from Washington Mutual Bank. (Doc. # 5-6 at 2-10).  
5     California Reconveyance Company was the original trustee under the deed of trust. (Doc. # 5-7  
6     at 2). The loan was secured by a deed of trust lien on the Clark County, Nevada, residential  
7     property of plaintiff.

8             In September 2008, the Office of Thrift Supervision closed Washington Mutual Bank and  
9     appointed the Federal Deposit Insurance Company (“FDIC”) as receiver. (Doc. # 5-2 at 2). FDIC  
10    seized Washington Mutual Bank’s assets and sold the seized assets to Chase. (See docs. ## 5-2 at  
11    2; 5-3).

12            As a part of the acquisition, Chase acquired the rights of Washington Mutual Bank as lender  
13    and beneficiary arising under all of the loan assets of Washington Mutual Bank, including the note  
14    and deed of trust. (Doc. # 5-3 at 9).

15            On April 30, 2012, plaintiff signed notarized statements, acknowledging that he entered  
16    into the agreements concerning the loan and that he made one or more payments to Chase in  
17    connection with the loan.<sup>4</sup> (Docs. # 5-8; 5-9). Plaintiff also asserted that he had somehow  
18    “discharged any and all alleged debt” arising from the loan. (*Id.*). Plaintiff recorded the statements  
19    on May 1, 2012.<sup>5</sup> (Docs. ## 5-8 at 2; 5-9 at 3). On July 17, 2012, plaintiff’s wife signed a notarized  
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22            <sup>3</sup> The court must lean heavily on the documents provided by defendant to understand the  
23    factual background. Plaintiff’s complaint, though incredibly long, provides very few specific  
24    facts. The court judicially recognizes all of the following documents: the deed of trust, the  
25    assignments of the deed of trust, the substitution of trustee, the *lis pendens*, and other documents  
26    filed with the Clark County, Nevada recorder’s office. See *Intri-Plex Technology, Inc. v. Crest*  
27    *Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007) (“A court may take judicial notice of matters of  
28    public record without converting a motion to dismiss into a motion for summary judgment as long  
29    as the facts are not subject to reasonable dispute.”)

30            <sup>4</sup> Defendants assert that plaintiff has not made any payments on the loan since on or around  
31    April 14, 2012. (Doc. # 5-1 at 29).

32            <sup>5</sup> A duplicate of one of the statements was also recorded on July 16, 2012. (Doc. # 5-9 at  
33    2).

1 statement acknowledging that she entered into the agreements concerning the loan. (Doc. # 5-10  
2 at 2-3). Plaintiff recorded the statement on July 18, 2012. (*Id.*).

3 On August 21, 2012, plaintiff filed a notarized notice of dispute with National Default.  
4 (Doc. # 5-1 at 31-33). Plaintiff asserted that he was “exercising all [his] rights under the ‘Fair  
5 Debt Collections Practices Act’ . . . which stipulates that a debt collector must, if requested, provide  
6 verification of the alleged debt . . . .” (Doc. # 5-1 at 31). National Default sent a response  
7 acknowledging receipt of plaintiff’s request to verify the debt in connection with the pending  
8 trustee sale. (Doc. # 5-1 at 37). National Default sent plaintiff a copy of the note, deed of trust,  
9 assignment, payment history, and payoff figures and reinstatement figures (for verification of debt  
10 purposes). (*Id.*).

11 National Default informed plaintiff that the servicer had directed them to proceed with the  
12 foreclosure action and to record a notice of default. (*Id.*). National Default informed plaintiff that  
13 they would provide him a copy of the notice of default and that he could also follow the status of  
14 the file on their website. (*Id.*).

15 On September 10, 2012, a corporate assignment of deed of trust was recorded to “further  
16 memorialize the transfer that occurred [between FDIC and Chase] by operation of law on  
17 September 25, 2008 . . . .” (Doc. # 5-11 at 2).

18 On March 25, 2013, Chase substituted National Default as trustee under the deed of trust.  
19 (Doc. # 5-12 at 2). On October 7, 2014, as a result of plaintiff’s failure to make payments under  
20 the note, National Default as trustee recorded a notice of default and election to sell under the deed  
21 of trust. (Doc. # 5-13).

22 On January 6, 2015, Nevada’s foreclosure mediation program recorded a certificate against  
23 the property. (Doc. # 5-1 at 69). Plaintiff still did not cure his payment default. Accordingly, on  
24 January 20, 2015, National Default recorded a notice of trustee’s sale. (Doc. # 5-15 at 2). National  
25 Default scheduled the sale for February 6, 2015, at 10:00 AM.

26 Plaintiff initiated the instant case on January 21, 2015. (Doc. # 1). Plaintiff’s complaint  
27 alleges “violations of the Fair Credit Reporting Act, Title 15 U.S.C. §1681, Fair Debt Collection  
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1 Practices Act, Title 15 U.S.C. § 1692 . . . and other breaches of law . . . .” (Doc. # 1 at 2). On  
 2 January 26, 2015, plaintiff recorded a notice of lis pendens against the property. (*Id.*, exh. P).

## 3 **II. Legal Standard**

4 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief  
 5 can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “[a] short and  
 6 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2);  
 7 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed  
 8 factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the  
 9 elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citation omitted).  
 10 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550 U.S. at  
 11 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to  
 12 “state a claim to relief that is plausible on its face.” *Iqbal*, 129 S.Ct. at 1949 (citation omitted).

13 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply  
 14 when considering motions to dismiss. First, the court must accept as true all well-pled factual  
 15 allegations in the complaint. *Id.* at 1950. However, legal conclusions are not entitled to the  
 16 assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported by  
 17 only conclusory statements, do not suffice. *Id.* at 1949. Second, the court must consider whether  
 18 the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is  
 19 facially plausible when the plaintiff’s complaint alleges facts that allows the court to draw a  
 20 reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949.

21 Where the complaint does not “permit the court to infer more than the mere possibility of  
 22 misconduct, the complaint has alleged, but it has not shown, that the pleader is entitled to relief.”  
 23 *Id.* (internal quotations and alterations omitted). When the allegations in a complaint have not  
 24 crossed the line from conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550  
 25 U.S. at 570.

26 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,  
 27 1216 (9th Cir. 2011). The *Starr* court stated, “First, to be entitled to the presumption of truth,  
 28 allegations in a complaint or counterclaim may not simply recite the elements of a cause of action,

1 but must contain sufficient allegations of underlying facts to give fair notice and to enable the  
 2 opposing party to defend itself effectively. Second, the factual allegations that are taken as true  
 3 must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing  
 4 party to be subjected to the expense of discovery and continued litigation.” *Id.*

### 5 **III. Discussion**

#### 6 *A. Violations of the Fair Credit Reporting Act against Chase*

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 8 To state a Fair Credit Reporting Act (“FCRA”) claim under § 1681s–2(b) against a  
 9 furnisher of information, a consumer must allege that “1) the furnisher provided inaccurate  
 10 information to the credit reporting agency (“CRA”); 2) the CRA notified the furnisher of a dispute;  
 11 and 3) the furnisher failed to conduct a reasonable investigation into the accuracy of the disputed  
 12 information, in light of the information provided to it by the CRA.” *Middleton v. Plus Four, Inc.*,  
 13 No. 2:13-cv-01421-GMN-GWF, 2014 WL 910351, at \*3 (D. Nev. Mar. 7, 2014).

14 Plaintiff asserts that on October 25, 2014, he notified the “three major credit reporting  
 15 agencies” of a dispute regarding his credit report. (Doc. # 1 at ¶ 15). However, plaintiff fails to  
 16 allege that Chase was ever presented a dispute by any credit reporting agency, which would have  
 17 triggered Chase’s duty under the FCRA. Further, plaintiff fails to allege that he is current on his  
 18 mortgage. Thus, the reported negative information to the credit reporting agencies was likely  
 19 appropriate. The court will dismiss plaintiff’s FCRA claim.

#### 20 *B. Violations of invasion of privacy against Chase*

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 22 “A cause of action for invasion of privacy requires: (1) an intentional intrusion by  
 23 defendant; (2) on the solitude or seclusion of the plaintiff; (3) that would be highly offensive to a  
 24 reasonable person.” *Downs v. River City Grp., LLC*, No. 3:11-cv-0885-LRH-WGC, 2012 WL  
 25 1684598, at \*4 (D. Nev. May 11, 2012). The tort has a public disclosure requirement, which  
 26 contemplates disclosure to more than individuals or small groups. *Kuhn v. Account Control Tech.*,  
 27 *Inc.*, 865 F. Supp. 1443, 1448 (D. Nev. 1994).  
 28

1 Plaintiff alleges that Chase is a “mere 3rd party ‘debt collector’ and a complete total  
2 stranger, (notwithstanding their: notorious criminal reputation,) to this Plaintiff, Who has  
3 absolutely no recollection of ever having any actual contractual relationship whatsoever with  
4 [Chase] and Plaintiff has never applied for any credit or services with this Defendant either.” (Doc.  
5 # 1 at ¶ 31). Plaintiff asserts that he has the right to investigate where and how Chase obtained his  
6 personal and private credit information.

7 Plaintiff does not specifically allege that Chase publically disclosed any private  
8 information. Rather, plaintiff asserts that he has a right to investigate how Chase obtained his  
9 personal and private credit information. Construing plaintiff’s claim liberally the court believes  
10 plaintiff is alleging that Chase disseminated his private information by reporting negative  
11 information to the credit reporting agencies.

12 Plaintiff fails to state a viable claim for relief. Plaintiff has not alleged any facts which  
13 suggest an intrusion occurred that is “highly offensive to a reasonable person,” let alone any facts  
14 that suggest an “intentional intrusion” occurred at all. Thus, there are no facts to suggest a  
15 plausible claim for relief.

16 *C. Negligent, wanton, and/or intentional hiring and supervision against Chase and National*  
17 *Default*

18 Plaintiff asserts a claim for “negligent, wanton, and/or intentional hiring supervision of  
19 incompetent employees or agents . . . .” (Doc. # 1 at ¶¶ 34-36). To state a claim for negligent  
20 training and supervision in Nevada, a “plaintiff must show (1) a general duty on the employer to  
21 use reasonable care in the training and/or supervision of employees to ensure that they are fit for  
22 their positions; (2) breach; (3) injury; and (4) causation.” *Montes v. Bank of Am. NA.*, 2:13-cv-  
23 660-RCJ-VCF, 2013 WL 5882778, at \*7 (D. Nev. Oct. 30, 2013) (citing *Okeke v. Biomat USA,*  
24 *Inc.*, 927 F. Supp. 2d 1021, 1028 (D. Nev. 2013)).

25 “Claims for negligent training and supervision are based upon the premise that an employer  
26 should be liable when it places an employee, who it knows or should have known behaves  
27 wrongfully, in a position in which the employee can harm someone else.” *Okeke*, 927 F. Supp. 2d  
28 at 1028. However, an “employee’s wrongful behavior does not in and of itself give rise to a claim

1 for negligent training and supervision.” *Id.* Claims for negligent hiring, on the other hand, depend  
 2 on an employer breaching its “general duty . . . to conduct a reasonable background check on a  
 3 potential employee to ensure that the employee is fit for the position.” *Rockwell v. Sun Harbor*  
 4 *Budget Suites*, 112 Nev. 1217, 1227 (1996) (quoting *Burnett v. C.B.A. Security Serv.*, 107 Nev.  
 5 787, 789 (1991)).

6 In his complaint, plaintiff fails to plead any facts to establish that Chase or National Default  
 7 “owed [him] a duty of care, as he does not name specific employees, does not identify the alleged  
 8 incompetence, or otherwise describe the conduct giving rise to this cause of action.” *See Gomez*  
 9 *v. Countrywide Bank, FSB*, O’Connor *v. Capital One, N.A.*, No. CV 14-00177-KAW, 2014 WL  
 10 2215965, at \*9 (N.D. Cal. May 29, 2014) (facing a substantially similar complaint). In addition,  
 11 plaintiff has not alleged any facts to suggest that this is a viable claim for relief, such as that Chase  
 12 or National Default failed to conduct reasonable background checks. The court will dismiss  
 13 plaintiff’s negligent hiring and supervision claim.

14 *D. Violations of the Fair Debt Collection Practices Act against Chase and National Default*

15 The Fair Debt Collection Practices Act (“FDCPA”) provides that activities undertaken in  
 16 connection with a non-judicial foreclosure do not constitute debt collection under the FDCPA. *See*  
 17 *Diessner v. Mortg. Elec. Reg. Sys., Inc.*, 618 F. Supp. 2d 1184, 1188–89. Plaintiff’s claim against  
 18 defendants must be dismissed because the defendants have undertaken activities connected with  
 19 the non-judicial foreclosure sale of the property at issue, and they are not considered “debt  
 20 collectors” under the FDCPA. *See Gillespie v. Countrywide Bank FSB*, No. 3:09-cv-556-JCM-  
 21 VPC, 2011 WL 3652603, at \*2 (D. Nev. Aug. 19, 2011). The court will dismiss plaintiff’s FDCPA  
 22 claim.

23 *E. Expunge lis pendens*

24 Pursuant to NRS § 14.015(3), the party who records a notice of pendency “must establish  
 25 to the satisfaction of the court . . . [t]hat the party . . . is likely to prevail in the action.”  
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1 Here, plaintiff has not demonstrated that he is likely to prevail. The court has dismissed  
 2 all claims in the complaint for failure to state a claim upon which relief can be granted.  
 3 Accordingly, the court grants defendants' motion to expunge lis pendens.

4 *F. Plaintiff's motions to amend complaint and to expand page limit*

5 Plaintiff seeks to amend his complaint by adding Michael A. Bosco, Esq. as a defendant.  
 6 Plaintiff also asks leave to expand his page limit for his proposed amended complaint.

7 Plaintiff first attempts to incorporate Bosco's alleged "violations" of the currently asserted  
 8 causes of action. Plaintiff's proposed amended complaint asserts that Michael Bosco is "intimately  
 9 intertwined [and] inseparable and connected in conspiracy" to the other defendants, because of  
 10 Bosco's "former quasi-Govt., high level employers['] connections at: Freddie Mac and Fannie  
 11 Mae . . . ." (Doc. # 26-3).

12 Plaintiff also asserts that he "adds violations." However, plaintiff does not appear to add  
 13 any additional causes of action. Plaintiff attempts to add "a constitutional dimension question"  
 14 and issues of "constitutional diversity." (Doc. # 26-3 at 1). The court cannot discern any  
 15 actionable constitutional violations from the plaintiff's ramblings.

16 The court finds that plaintiff's requested amendment would be futile. Plaintiff fails to plead  
 17 any facts to connect Michael Bosco to any of the asserted causes of action and fails to plead any  
 18 facts for the court to discern a constitutional violation.

19 **IV. Conclusion**

20 Accordingly,


21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to  
 22 dismiss for failure to state a claim (doc. # 5), be and the same hereby is, GRANTED.

23 IT IS FURTHER ORDERED that defendants' motion to expunge lis pendens (doc. # 6)  
 24 be, and the same hereby is, GRANTED.

25 IT IS FURTHER ORDERED that plaintiff's motions to amend complaint (doc. # 26) and  
 26 expand page limit (doc. # 27) be, and the same hereby are, DENIED.

1 IT IS FURTHER ORDERED that plaintiff's motions to quash defenses notice (doc. # 29),  
2 for more definite clarification (doc. # 30), and to compel initial pretrial disclosures (doc. # 31) be,  
3 and the same hereby are, DENIED as moot.

4 DATED June 22, 2015.

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6 UNITED STATES DISTRICT JUDGE  
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